

Merton Council
Licensing Sub-Committee
30 October 2017
Supplementary agenda

Notice of Determination

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London Borough of Merton



Licensing Act 2003 Notice of Determination

Date of issue of this notice: 31 October 2017

Subject: Sleeico Ltd, 288 London Road, Mitcham, CR4 3NB

Having considered relevant applications, notices and representations together with any other relevant information submitted to any Hearing held on this matter the Licensing Authority has made the determination set out in Annex A. Reasons for the determination are also set out in Annex A.

Parties to hearings have the right to appeal against decisions of the Licensing Authority. These rights are set out in Schedule 5 of the Licensing Act 2003 and Chapter 12 of the Amended Guidance issued by the Home Secretary (March 2015). Chapter 12 of the guidance is attached as Annex B to this notice.

For enquiries about this matter please contact

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Useful documents:

Licensing Act 2003

<http://www.hmso.gov.uk/acts/acts2003/20030017.htm>

Guidance issued by the Home Secretary

<http://www.homeoffice.gov.uk/>

Regulations issued by the Secretary of State for Culture, Media and Sport

http://www.culture.gov.uk/alcohol_and_entertainment/lic_act_reg.htm

Merton's Statement of Licensing policy

<http://www.merton.gov.uk/licensing/>

Annex A

Determination

The Licensing Sub-Committee considered an application made by the Police Licensing Officer PC Russ Stevens of the Metropolitan Police for the Review of the Premises Licence of "Sleeico" at 288 London Road, Mitcham, CR4 3NB held by Sleeico Limited.

The Metropolitan Police applied to review the Premises Licence under all 4 licensing objectives on the following grounds:

- Numerous complaints had been received about Anti-Social Behaviour connected to Street Drinkers who purchased alcohol from the premises and loitered unchallenged by staff outside or nearby the premises causing public nuisance
- Persistent failure to prominently display the summary of the Premises Licence
- Persistent failure to produce the Premises Licence on request by the Police
- Persistent failure to produce the DPS's Personal Licence to a Police Officer
- Persistent failure to discourage persons known to cause Anti-Social Behaviour from frequenting the area around the premises and from purchasing and consuming high strength alcohol contrary to an agreement not to do so with the Police
- Sale of alcohol outside permitted hours to an undercover Police Officer
- Knowingly allowing non duty paid goods to be kept on and sold from the premises
- Customers found at the rear of premises smoking cannabis unchallenged

In discharging its functions in respect of this Review, the Licensing Sub-Committee had to take such steps that promoted the Licensing Objectives and that were appropriate and proportionate, pursuant to section 52 of the Licensing Act 2003.

The Licensing Sub-Committee considered evidence from the Police and other Responsible Authorities. The application for review by the Police was supported by representations by the Licensing Authority, Public Health and Trading Standards.

The Licensee did not attend the meeting despite being served with the committee papers at the registered address of the Premises Licence holder, the addresses supplied to the Licensing Authority and service at the premises and by email.

The Licensing Sub-Committee decided to revoke the Premises Licence for this premises known as "Sleeico" at 288 London Road, Mitcham, CR4 3NB held by Sleeico Limited.

Reasons

The Licensing Sub-Committee carefully considered the Agenda and Supplemental Agenda (including the application and all of the Representations and additional comments and documents) and the oral evidence submitted at the hearing by the Metropolitan Police and Responsible Authorities. The Licensing Sub-Committee also viewed and considered video evidence submitted by the Metropolitan Police.

The reasons for the decision were that the Sub-Committee had evidence of repeated inspections required by the Police, HMRC and the Licensing Authority that observed numerous breaches and offences as listed below:

	Incident	Date	Details
1.	Inspection	23 rd March 2016	Responsible Retailer Agreement signed by Kandiah Arasalingam (with Sgt Paoli) with commitment not to store or sell alcohol above 6.5% ABV.
2.	Inspection	November 2016	Kandiah Arasalingam not present, PC Stevens spoke to Sri Arasalingam. Breach/offence: No summary of Premises Licence on display [s57LA03]. Breach/offence: No Premises Licence behind the counter [s57LA03]. RRA breach: Beer and Cider over 6% ABV.
3.	Complaints to Police	July 2017	Complaints were received of street drinkers purchasing alcohol from the premises and causing Public Nuisance to the public and especially the residents of Glebe Court and Deseret House, whilst consuming alcohol outside or nearby the premises including allegations of aggressive rowdy behaviour to the public, The public had also made allegations of the premises trading well beyond its authorised trading hours.
4.	Inspection	7 th July 2017	PC Stevens met Kandiah and Sri Arasalingam. Breach/offence: drunk sale Offence: obstruction of Police officer (PLH not admitting to being the PLH) [s89(2) Police Act 1996] Breach: No summary of the Premises Licence displayed [s57LA03]. Breach: No Premises Licence behind the counter [s57LA03]. Breach: No Personal Licence provided [s135LA03]. RRA breach: Beer and Cider over 6% ABV. Service: Notification of Offences Form
5.	Joint Inspection	13 th July 2017	PC Stevens with Barry Croft, Licensing Authority met Kandiah Arasalingam and Sri Arasalingam. Breach: No summary of the Premises Licence displayed [s57LA03]. Breach: No Premises Licence behind the counter [s57LA03].

			Breach: No Personal Licence provided [s135LA03]. RRA breach: Beer and Cider over 6% ABV. Service: Police Warning Letter
6.	HMRC / Police Inspection	27 th July 2017	600+ items of stock seized for non-payment of VAT. Offence: Non-VAT paid alcohol. Civil Penalty through seizure.
7.	Test purchase outside PLH hours	31 st August 2017 [22.17]	Test purchase outside PLH hours, following complaints of trading outside the Premises Licence. Tatra beer purchased that was 7% ABV outside of hours. Offence: unauthorised sale [s136LA03].
8.	Inspection	1 st September 2017	PC Stevens met Mrs Arasalingam ASB: urination in the street 15 ft from shop. ASB: 2 drunks sitting outside drinking. Breach/offence: evidence of 2 drunk sales [s141LA03]. Offence (warning): cannabis smoking in rear car park by customers. Breach: No summary of the Premises Licence displayed [s57LA03]. Breach: No Personal Licence provided [s57LA03]. RRA breach: Beer and Cider over 6% ABV. Service: Police Closure Notice.

The view of the Licensing Sub-Committee (presented in the evidence from the Police and the Responsible Authorities) was that:

- (a) the Licence Holder had demonstrated they could not operate within the authorisation of the Premises Licence in terms of the hours, licensable activities and the conditions of the existing licence and compliance with the Licensing Act 2003, despite guidance from responsible authorities;
- (b) further public nuisance and crime and disorder would occur and it was therefore their belief that any other conditions added to the Premises Licence would not address these issues, that removal of the DPS would not address the issues, that a suspension however long or short would not address these issues.
- (c) Paragraphs 11.27 and 11.28 of the s182 Home Office Guidance were applicable to this situation, in that “responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered”.

It was decided that Revocation was the only appropriate and proportionate step to take.

Annex B

Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (June 2014).

12.Appeals

12.1 This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

GENERAL

12.2 With the exception of appeals in relation to closure orders, an appeal may be made to any magistrates' court in England or Wales but it is expected that applicants would bring an appeal in a magistrates' court in the area in which they or the premises are situated.

12.3 An appeal has to be commenced by the appellant giving of a notice of appeal to the designated officer for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision which is being appealed.

12.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant, licence holder, club or premises user against the representations of a responsible authority or any other person, or the objections of the chief officer of police or local authority exercising environmental health functions, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal, and the person who made the relevant representation or gave the objection will be the appellants.

12.5 Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as a witness a responsible authority or any other person who made representations against the application, if it chooses to do so. For this reason, the licensing authority should consider keeping responsible authorities and others informed of developments in relation to appeals to allow them to consider their position. Provided the court considers it appropriate, the licensing authority may also call as witnesses any individual or body that they feel might assist their response to an appeal.

12.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

12.7 On determining an appeal, the court may:

- dismiss the appeal;
- substitute for the decision appealed against any other decision which could have been made by the licensing authority; or

- remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

LICENSING POLICY STATEMENTS AND SECTION 182 GUIDANCE

12.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it was justified to do so because of the individual circumstances of any case. In other words, while the court will normally consider the matter as if it were "standing in the shoes" of the licensing authority, it would be entitled to find that the licensing authority should have departed from its own policy or the Guidance because the particular circumstances would have justified such a decision.

12.9 In addition, the court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review, but where it is submitted to an appellate court that a statement of policy is itself ultra vires the 2003 Act and this has a direct bearing on the case before it, it would be inappropriate for the court, on accepting such a submission, to compound the original error by relying on that part of the statement of licensing policy affected.

GIVING REASONS FOR DECISIONS

12.10 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

IMPLEMENTING THE DETERMINATION OF THE MAGISTRATES' COURTS

12.11 As soon as the decision of the magistrates' court has been promulgated, licensing authorities should implement it without delay. Any attempt to delay implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, appropriate action should be taken immediately unless ordered by the magistrates' court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates' courts and normal rules of challenging decisions of magistrates' courts will apply.

PROVISIONAL STATEMENTS

12.12 To avoid confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. After receiving and considering relevant representations, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be appropriate for the promotion of the licensing objectives when, and if, an application were made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.

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